UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Chambers of
BENSON EVERETT LEGG
Chief Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-0723

December 8, 2009

MEMORANDUM TO COUNSEL RE: Erie Insurance Exchange, et al. v. Davenport Insulation, Inc., et al.,
Civ. No. L-08-0033

Dear Counsel:

This case began with a fire at the residence of Sharon and Robert McNutt in Stevensville, Maryland. The insurer of the McNutts' home, Plaintiff Erie Insurance Exchange ("Erie"), sued its subrogation target, Defendant Builder Services Group, Inc. ("BSG"), for negligent installation of a fireplace. On September 30, 2009, the Court granted BSG's motion for summary judgment and dismissed the case.

Now pending are Erie's motion to extend the time for filing a motion for reconsideration and Erie's motion for reconsideration. Docket Nos. 63, 64. For the reasons stated herein, the Court DENIES Erie's motions. The case remains CLOSED.

I. Background

Erie initially filed suit against BSG and Davenport Insulation in the Circuit Court for Queen Anne's County, Maryland. Davenport Insulation, the first defendant in this case, is the trade name of BSG. On January 7, 2008, BSG, a citizen of Florida, removed the case to the United States District Court for the District of Maryland under federal diversity of citizenship jurisdiction. Docket No. 1. In its amended Complaint, Erie represented itself as a Pennsylvania corporation with its principal place of business in that state. Docket No. 9, Pl.'s Am. Compl. 2. Erie acknowledged that "there is complete diversity of citizenship between the [parties]." Id.

Nevertheless, on November 30, 2008, Erie filed a motion to remand, alleging that Erie and BSG are non-diverse parties. Docket No. 34. Erie explained that because it is a reciprocal insurance exchange, under Pennsylvania law, it is an unincorporated association. Id. Under

Fourth Circuit law, an unincorporated association is a citizen of each state in which its members reside. See Clephas v. Fagelson, Shonberger, Payne & Arthur, 719 F.2d 92, 93-94 (4th Cir. 1983). Erie argued that its policyholders are equivalent to members of an association. Therefore, because some of its policyholders resided in Florida, Erie contended that it is also a citizen of Florida.

The Court rejected Erie's argument. Relying on an analogous case from the Northern District of Illinois, Garcia v. Farmers Insurance Exchange, 121 F. Supp. 2d 667, 669 (N.D. Ill. 2000), the Court reasoned that "Erie's policyholders are its customers, not its members." Docket No. 44, 3 (emphasis added). Therefore, the Court found that Erie was not a resident of Florida and that diversity jurisdiction was proper. Id. Accordingly, on May 22, 2009, the Court denied Erie's motion to remand. Id.

Erie did not take an appeal from the Court's Order, and on September 30, 2009, the Court granted summary judgment in favor of BSG. On October 15, 2009, Erie filed a motion for reconsideration of its motion to remand. Because the case is closed, however, it cannot be remanded unless the Court vacates its judgment in favor of BSG. Accordingly, the Court will construe Erie's motion as a motion for relief from the judgment under Federal Rule of Civil Procedure 60(b).

II. Analysis

Erie seeks relief under Rule 60(b)(6), which is a catchall provision that allows a court to grant relief for any reason. Erie argues that the judgment should be vacated because the parties were not diverse. In support of this position, Erie relies on a recent case from the Northern District of Illinois. See Lavaland, LLC v. Erie Ins. Exch., No. 8-771-DRH, 2009 WL 3055489 (S.D. Ill. Sep. 22, 2009). The Lavaland court held that Erie is a citizen of every state in which its policyholders reside. Id. at *3.[1] Lavaland directly conflicts with the Northern District of Illinois's decision in Garcia, which this Court relied on in denying Erie's motion to remand.

Case law limits the reasons for which a court may grant relief under Rule 60(b)(6). Erie argues that the judgment should be vacated because "such action is appropriate to accomplish justice." Klapprott v. United States, 335 U.S. 601, 615 (1949). Case law limits this exception to

[1] The Lavaland decision is in accordance with the decision of another judge in this District. See Hiob v. Progressive American Ins. Co., No. AMD-08-744, 2008 WL 5076887 (D. Md. 2008). Both decisions are unpublished.

"situations involving extraordinary circumstances." See Dowell v. State Farm Fire and Cas. Auto. Ins. Co., 993 F.2d 46, 48 (4th Cir. 1993).

This is not a situation involving extraordinary circumstances. Lavaland is not binding on this Court, and it was decided a mere eight days before the Court entered judgment in favor of BSG. Erie did not seek leave for additional briefing when Lavaland was decided. Rather, it only brought the case to the Court's attention after the Court ruled against Erie.

Moreover, Erie did not take an interlocutory appeal from the Court's ruling on its motion to remand. That ruling, that diversity jurisdiction was proper, is at the heart of the instant motion. The failure to file an appeal is fatal to a claim of extraordinary circumstances. Id. Erie, believing that it might obtain a favorable outcome in this Court, took a calculated risk. Accordingly, Erie is not entitled to relief under Rule 60(b)(6).

The motions are DENIED and the case remains CLOSED.

/s/
Benson Everett Legg
Chief Judge
U.S. District Court